Supreme Court, U.S.
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NO. 86-115

NO.

IN THE

Supreme Court of the United States

October Term, 1986

DENIS R. O'BRIEN,

Petitioner,

v.

SHC CORPORATION, et al.,

Respondents.

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I.

Whether the courts below correctly held that the Notice by Certified Mail provisions of the Virginia "Long-Arm" statute (Va. Code § 8.01-329) did not violate the due process or equal protection clauses of the Fourteenth Amendment of the United States Constitution.

II.

Whether the courts below correctly held that Petitioner did not have grounds for an action under 42 U.S.C. § 1983.

PARTIES

STATEMENT PURSUANT TO RULES 21.1.(b) and 34.2

Parties in the proceedings below were: Denis R. O'Brien, Appellant (Petitioner here); SHC Corporation, A Virginia Corporation A/K/A Mousetrap Vintage Cellars; Laurie Naismith as Secretary of the Commonwealth of Virginia; Mary Sue Terry, Successor to Gerald L. Baliles as Attorney General of the Commonwealth of Virginia; John C. Lowe; and, Lowe, Gordon, Jacobs and Snook, Ltd. Appellees (Respondents here).

STATEMENT PURSUANT TO RULE 28.1

SHC Corporation has no subsidiaries or affiliates.

TABLE OF CONTENTS

Page

Questions Presented.....i

Parties.....ii

Table of Authorities.....iv,v

Statement of the Case.....1

Statement of the Facts.....2

Summary of Reasons for Denying the Writ.....8

Argument.....9

I. The Courts Below Correctly Applied Prior Decisions Of This Court And Other Circuit Courts In Concluding That The Notice By Certified Mail Provision Of The Virginia "Long-Arm" Statute (Va. Code § 8.01-329) Does Not Violate The Due Process Or The Equal Protection Clause Of The Fourteenth Amendment To The U.S. Constitution.....9

II. The Courts Below Correctly Ruled That Petitioner Did Not Have Grounds For An Action Under 42 U.S.C. § 1983, And That In Any Event, Petitioner Had Actual Notice Of The Suit.....17

Conclusion.....21

Appendix.....I

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

Page

Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).....18

Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978).....18

Friedman v. Rogers, 440 U.S. 1, 17-18 (1979).....17

Grannis v. Ordean, 234 U.S. 385 (1914).....13

Greene v. Lindsey, 456 U.S. 444, 455 (1982).....12

Hodel v. Indiana, 452 U.S. 314, 331 (1982).....10

Mennonite Board of Missions v. Adams, 462 U.S. 799 (1983).....12

Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 305 (1950).....10-14

Parratt v. Taylor, 451 U.S. 527 (1981).....17

Pierson v. Ray, 386 U.S. 547 (1967).....18

Fourth Circuit Cases

Deas v. Potts, 547 F.2d 800 (4th Cir. 1976).....19

Gkiafis v. Steamship Yiosionas, 342 F.2d 546 (4th Cir. 1965).....13

Hall v. Quillen, 631 F.2d
1154 (4th Cir. 1980).....19

Virginia Lime Co. v. Craigsville
Distributing Co., Inc., 670 F.2d
1366 (4th Cir. 1982).....12,16

Cases From Other Courts

Jackson v. Salon, 614 F.2d 15
(1st Cir. 1980).....19

Landcraft Co. v. Kincaid, 220 Va. 865,
870, 263 S.E.2d 419, 422 (1980).....10

Mularkey v. Borghum, 323 F. Supp. 1218
(D.C. N.Y. 1970).....19

Shelton v. Randolph, 373 F. Supp. 488
(W.D. Va. 1974).....19

Spur v. Robert C. Herd & Co.,
189 F. Supp. 432 (D.Md. 1960).....13

Stateside Machinery Co., Ltd. v. Alperin,
591 F.2d 234, 241-42 (3d Cir. 1979).....14

Televest, Inc. v. Bradshaw, 547 F. Supp.
792, 796 (E.D. Va. 1982).....10

Statutes, Rules and Treatises

42 U.S.C. § 1983.....9,17,19-21

Va. Code § 8.01-329.....1,9,11,16

Va. S.Ct. R. 3:17.....10,21

Service of Process by Mail,
74 Michigan L. Rev. 381 (1975).....13,14

STATEMENT OF THE CASE

Petitioner seeks this Court's review of an order of the United States Court of Appeals for the Fourth Circuit, affirming the action of the United States District Court for the Western District of Virginia in granting summary judgment in favor of respondents and against petitioner.

The district court action was filed by petitioner Denis R. O'Brien in January 1, 1984, against respondents SHC Corporation; the corporation's attorney, John C. Lowe; Virginia's Secretary of the Commonwealth, Laurie Naismith; and Virginia's then Attorney General, Gerald L. Baliles. Petitioner, a Massachusetts resident who formerly resided in Virginia, had been sued in Virginia state courts for malicious prosecution and other torts perpetrated while he was in Virginia. Petitioner was served in Massachusetts pursuant to Virginia's "Long Arm" statute for service of process on non-residents by certified mail, Va. Code § 8.01-329 (Pet. App. 1-C). Petitioner did not respond to the suit, and a default judgment was eventually taken against him. Thereafter,

petitioner filed this civil rights action seeking to set aside the state court judgments, and challenging the constitutional validity of Virginia's "Long Arm" statute as violative of due process and equal protection. Respondents moved for summary judgment, submitting numerous affidavits and exhibits, including depositions of petitioner taken during the prior state court actions, all of which conclusively established that petitioner not only actually resided at the Massachusetts address to which the certified notice of suit was delivered, but also that he had actual notice of the suit and went to the courthouse to examine the case file before the trial assessing damages against him. Citing these facts, and concluding that the Virginia statute satisfied the requirements of due process, the district court granted respondents motion for summary judgment. The circuit court affirmed in an unpublished opinion on March 4, 1986.

STATEMENT OF THE FACTS

The District Court's decision sets out many of the significant and controlling facts in this case.

Petitioner's own admissions and the uncontested facts of record establish the following:

1. That petitioner actually resided at 184 Farrington, Wollaston, Massachusetts, a "single family house" (Pet. App. C-2) and that he did so on February 12, 1982 (Res. App. I-1) (Pet. App. A-17) when the Affidavits, and the Motion for Judgment were filed with the Circuit Court for the City of Charlottesville. (Pet. App. B-3,4)

2. That on February 23, 1982, Petitioner resided at the same Wollaston, Massachusetts address when the "Long Arm" Statute notice consisting of the Affidavits, and the Motion for Judgment were mailed. (Res. App. I-1) (Pet. App. B-21)

3. That he was residing at that same address at least until February 28, 1982. (Res. App. I-1) (Pet. App. A-18)

4. That in February, 1982, he was not a resident of the Commonwealth of Virginia. (Pet. App. C-5)

5. That two similar state court Motions for Judgment were filed against him, one by Respondent SHC and one by a certain Christopher Wren in the Charlottesville Circuit Court, and that these Motions for Judgment alleged tortious conduct including malicious prosecution on Petitioner's part, arising out of his own use of Virginia's courts to pursue lawsuits against Respondents SHC and Wren in the same Court during a period from September, 1980 to October, 1981. (Pet. App. A-10,11)

6. That the Secretary of the Commonwealth received these Motions for Judgment and used the United States Postal Services' certified mail to send them, each with an explanatory cover letter, in separate envelopes which were postmarked February 23, 1982, to Peititioner at his residence, 184 Farrington, Wollaston, Massachusetts, 02170. (Pet. App. B-1,2; B-21)

7. That this certified mail arrived in Massachusetts and delivery was attempted at that residence for one such notice on the 25th and for the other on the 26th of February, 1982; and for both again

on the 3rd as well as on the 13th of March, 1982; that postal notices (so-called "pink slips") were left at the residence at 184 Farrington, Wollaston, Massachusetts; and, that the Petitioner initially failed to pick up any such postal notices. (Pet. App. A-12, B-21)

8. That after a phone call from a Charlottesville "friend" in April or May, 1982, Petitioner became aware of the actual postal notices by telephoning his former roommate and landlord, Mr. Raines, who resided at the Wollaston address, and shortly thereafter Petitioner obtained these notices along with his other mail. Petitioner then went to the local post office to pick up his "certified" mail but was "too late". All of this occurred before the jury trial in the Charlottesville Circuit Court on June 15, 1982. (Pet. App. C-8-12)

9. From March through June of 1982 Petitioner continued to reside in the Commonwealth of Massachusetts and kept in contact with his prior landlord, Mr. Raines regarding his mail. (Res. App. I-1) (Pet. App. C-10)

10. That the pieces of certified mail were mailed back to the Secretary of the Commonwealth of Virginia by the Massachusetts Post Office on March 13, 1982, each marked "unclaimed" as noted on the envelopes. (Pet. App. A-12, B-21)

11. That the attempts to deliver this certified mail to Petitioner in Massachusetts occurred at a point in time more than 21 days (actually 45 days) prior to the Default Judgment Orders entered by the Charlottesville Circuit Court on April 5, 1982. (Pet. App. A-12, B-21, 13-14)

12. That Petitioner admits he had actual knowledge of the actions against him in the Charlottesville Circuit Court, based on a phone call from a "friend" in Charlottesville in April or May, well before the jury trial in state court scheduled for June 15, 1982. At this time, he drove to Charlottesville and went to the courthouse and obtained and reviewed copies of the file papers in the case against him. (Pet. App. C-B-15)

13. That on April 5, 1982, the Charlottesville Circuit Court entered Default Judgment Orders against O'Brien, scheduled a jury trial for damages on June 15, 1982, and, in its Default Judgment Orders, instructed Respondent Lowe to mail a copy of the Orders to O'Brien. A copy of the Orders was mailed to the address at 184 Farrington, Wollaston, Massachusetts. (Pet. App. A-12, 13)

14. That Petitioner knew of the Default Judgment Orders against him and of the pending jury trial in the Spring of 1982, prior to June 15, 1982. (Pet. App. A-19)

15. That there was a jury trial in the Charlottesville Circuit Court on June 15, 1982, of which Petitioner was aware and at which he chose not to appear, and in which there were verdicts from which he did not appeal. (Pet. App. B-18, 19) (Pet. 23)

16. That Petitioner, by counsel, filed—on April 5, 1984—almost two (2) years after the jury trial on

damages and more than two (2) years after Default Judgment Orders—Motions to Set Aside the Default Judgment in the Charlottesville Circuit Court in which Respondent Lowe and SHC were not cited as parties, and to date has not pursued any further action in that court on those motions or before any other state court in Virginia; (Pet. 25) (Pet. App. A-14)

18. That Respondent John C. Lowe is, and was at all times pertinent hereto, an attorney in private practice with the private law firm of Lowe, Gordon, Jacobs and Snook, LTD., representing private clients, including Respondents SHC.

SUMMARY OF REASONS FOR DENYING THE WRIT

1. Petitioner's due process claims have been rejected previously by this Court, and by numerous decisions of several circuit courts of appeal. The Virginia "Long-Arm" Statute notice provisions, which require certified mail notice to the non-residents' last known address, are constitutional because they are reasonably calculated under all circumstances to apprise

interested parties of the pendency of actions against them.

2. Petitioner's contention that the Virginia Long Arm statute violates equal protection because it does not conform with other state's concepts of notice, does not state a constitutional claim and merits no review by this Court.

3. The Courts below were correct in holding that the necessary elements for an action by Petitioner against the Respondents under 42 U.S.C. § 1983 were not present in this case, and further, that petitioner had actual notice of the suits pending against him and failed to take any action to protect his interests.

ARGUMENT

I. The Courts Below Correctly Applied Prior Decisions Of This Court And Other Circuit Courts In Concluding That The Notice By Certified Mail Provision Of The Virginia "Long-Arm" Statute (Va. Code § 8.01-329) Does Not Violate The Due Process Or The Equal Protection Clause Of The Fourteenth Amendment To The U. S. Constitution.

Petitioner challenges a default judgment granted against him under Virginia Rule 3:17 (which is similar in effect to Rule 55 of the Federal Rules of Civil Procedure). In order to grant such a default judgment the state court must have jurisdiction over the subject matter and the person. Landcraft Co. v. Kincaid, 220 Va. 865, 870, 263 S.E.2d 419, 422 (1980). Petitioner does not contest the subject matter jurisdiction of the state court, but only its jurisdiction over his person. There is nothing unique about petitioner's contentions. He claims that because he did not actually receive the certified mail notice sent to his last known address, that the statute establishing this procedure violates due process. This claim is without merit.[1]

In Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 305 (1950), this Court established the standard for determining whether service of process

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[1] State statutes are presumed to be constitutionally valid. Telvest, Inc. v. Bradshaw, 547 F. Supp. 792, 796 (E.D. Va. 1982). A party challenging a state law as violative of the Fourteenth Amendment bears a "heavy burden" in establishing the validity of his claim. Hodel v. Indiana, 452 U.S. 314, 331 (1982).

or an underlying notice complies with the Due Process Clause of the Fourteenth Amendment.

Mullane held that notice is constitutionally adequate when it is "reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 314. Careful consideration of the notice provisions of Virginia's "Long-Arm" Statute, (Va. Code § 8.01-329), reveals that this statute, and the mechanism it establishes, are reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections, and thus are clearly constitutional.

Under Mullane, "(t)he reasonableness and hence the constitutional validity of any chosen method (of service) may be defended on the grounds that it is in itself reasonably certain to inform those affected..." 339 U.S. at 315. Thus, the method of service chosen by the Virginia Legislature, i.e., notice by certified or registered mail sent to the non-resident party's last

known post office address must be judged by whether it is reasonably certain to inform those affected.

This Court has continually recognized the mail as an "efficient and inexpensive means of communication upon which prudent men will rely in the conduct of important affairs." Greene v. Lindsey, 456 U.S. 444, 455 (1982). See also Mullane, 339 U.S. at 315; and Mennonite Board of Missions v. Adams, 462 U.S. 799 (1983).

Likewise, the use of the absent party's last known address as mandated by the Virginia legislature, is a method reasonably certain to inform those affected and, therefore, consititutional under Mullane, because it is a means that "one desirous of actually informing the absentee might reasonably adopt to accomplish it." Mullane, 339 U.S. at 315. The Fourth Circuit Court of Appeals, in a recent case factually similar to the present action, upheld the constitutionality of Virginia's notice provisions with the last known address requirement. Virginia Lime Co. v. Craigsville Distributing Co., Inc., 670 F.2d 1366 (4th Cir. 1982).

Petitioner further agrues that the statute is unconstitutional because it does not require the filing of a signed, certified mail return receipt as evidence of actual notice. However, proof of actual notice, either by return receipt or otherwise, is not constitutionally required. See, e.g., Gkiafis v. Steamship Yiosionas, 342 F.2d 546 (4th Cir. 1965); Spur v. Robert C. Herd & Co., 189 F. Supp. 432 (D.Md. 1960); Restatement (2nd) of Judgments § 2 1980. See generally Note, Service of Process by Mail, 74 Michigan L. Rev. 381 (1975). The use of the mails to effect service upon non-resident parties is unquestionably reasonable in view of the long recognized reliability of the mails. See Grannis v. Ordean, 234 U.S. 385 (1914).

Moreover, under Mullane, the method of service need be only "reasonably certain", not absolutely certain to provide the non-resident with actual notice. Thus, the Court's language in Mullane necessarily contemplates that the constitutionality of the method be determined as of the time the service is made, i.e., when the process is deposited in the postal system. See

Note, Service of Process by Mail, supra, at 383. It is clear Virginia follows this with its compliance affidavit requirement. The service is constitutional if, when mailed, there was a reasonably probability that it would reach the non-resident party, notwithstanding that subsequent events might preclude the (party) from receiving it." Id.

As this Court pointed out in Mullane,

> "reasonable risks that notice might reach every (party) are justifiable. Now and then an extraordinary case may turn up, but constitutional law like other mortal contrivances, has to take some chances, and in the great majority of instances, no doubt justice will be done."

339 U.S. at 319.

The mere fact that a certified letter sent under this statute does not arrive or is unclaimed has no bearing on the constitutionality of the "Long-Arm" service. The United States Court of Appeals for the Third Circuit succinctly stated the principle in Stateside Machinery Co., Ltd. v. Alperin, 592 F.2d 234, 241-42 (3d Cir. 1979) as follows:

> As long as a method of service is reasonably certain to notify a person, the

> fact that the person nevertheless fails to receive process does not invalidate the service on due process grounds.
>
> In this case, [Plaintiff] attempted to deliver process by registered mail to defendant's last known address. That procedure is a highly reliable means of providing notice of pending legal proceedings to an adverse party. That [Defendant] nevertheless failed to receive service is irrelevant as a matter of constitutional law. [Citations Omitted.]

In the instant case it is worth noting again that Respondent Lowe's affidavit to the Charlottesville Circuit Court and the Secretary of the Commonwealth's letter and compliance affidavit, when completed, filed and mailed, all contained Petitioner's admitted actual residential address. (Res. App. I-1, II-1-8)

Petitioner also claims that the Respondents violated his constitutional rights by not making use of alternative means available to provide him with actual notice, such as providing notice at O'Brien's place of employment.

It is possible that the use of every available means of service might guarantee actual notice, but as established above, "reasonable probability" of notice,

not actual notice, is the constitutional standard. See Virginia Lime Co., 670 F.2d at 1136. (Where the Fourth Circuit Court of Appeals rejected Appellant's claim that service should have been attempted at a different business address.) In any event, as will be discussed more fully below, it is undisputed that petitioner did have actual notice of the default judgments against him before the date of the jury trials to assess damages, and well within the time limitations to seek an order setting aside the default judgments.

Petitioner also contends that the Virginia Code § 8.01-329 violates the Equal Protection Clause of the Fourteenth Amendment. The only theory he advances to support this contention, however, is that some states require proof of actual notice of suit, while other states, such as Michigan, Colorado, Pennsylvania, and Virginia, to name a few, do not. (See Pet. for Cert. at 34-35.) This theory merits no review by this Court.

The Equal Protection clause of the Fourteenth Amendment to the United States Constitution prohibits a state from denying to any person or class of persons

within its jurisdiction the equal protection of the laws. The Equal Protection Clause is not a basis for challenging statutes, otherwise legitimate, because they may vary from state to state.

Clearly, the Virginia statute creates no classification or distinction subject to equal protection scrutiny as it results in no arbitrary or invidious discrimination. Friedman v. Rogers, 440 U.S. 1, 17-18 (1979).

II. The Courts Below Correctly Ruled That Petitioner Did Not Have Grounds For An Action Under 42 U.S.C. § 1983, And That In Any Event, Petitioner Had Actual Notice Of The Suit.

In Parratt v. Taylor, 451 U.S. 527 (1981), the United States Supreme Court identified the elements necessary to establish a cause of action under 42 U.S.C. § 1983.

> "[I]n any § 1983 action, the initial inquiry must focus on whether the two essential elements to a § 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived any person of rights, privileges or

> immunities secured by the constitution or laws of the United States."

Two elements, then, must be proven by Petitioner to entitle him to recover under § 1983. First, as regards Respondent SHC[2] he must prove that they have deprived him of a right secured by the Constitution and laws of the United States. Second, he must show that they deprived him of this right under color of any statute, ordinance, regulation, custom or usage. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978). Clearly, neither of these elements is present in this case.

The first element is the deprivation of a constitutional right. Respondent SHC and its attorneys simply complied with the state statute authorizing out of state process. This compliance with the state statute, even if the statute is unconstitutional, releases SHC from any liability. Pierson v. Ray, 386 U.S. 547 (1967).

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[2] (It appears that Petitioner is not asking for review of the lower court's favorable decision as to Respondents Lowe and Lowe, Gordon, Jacobs & Snook, Ltd.)

Petitioner has also failed to prove that SHC acted under color of law, the second essential element in any § 1983 claim. It is well established that the actions of a private attorney representing private clients are not acts under color of state law. Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980) cert. denied, 454 U.S. 1141 (1982); Deas v. Potts, 547 F.2d 800 (4th Cir. 1976); Shelton v. Randolph, 373 F. Supp. 488 (W.D. Va. 1974); Mularkey v. Borghum, 323 F. Supp. 1218 (D.C. N.Y. 1970); Jackson v. Salon, 614 F.2d 15 (1st Cir. 1980) (where the court held that the actions of an attorney, properly using a method of service are not performed under color of state law).

As regards the Secretary of the Commonwealth, a cause of action under 42 U.S.C. § 1983 also does not exist. While admittedly such an individual can be considered a state actor, the second element of an action under § 1983, the deprivation of a right secured by the Constitution, is still absent. As discussed above, the Notice by certified mail provision of the Virginia "Long Arm" Statute does not violate the Due Process or

the Equal Protectoin Clause of the Constitution. Clearly then, compliance with the Statute does not deprive Petitioner of a right secured by the Constitution and, thus, he does not have grounds for an action under 42 U.S.C. § 1983.

Finally, it must be emphasized that Petitioner admits, as noted in the District Court's opinion, O'Brien v. SHC Corporation (W.D. Va. 1985) (Pet. App. A-2), that he learned of this pending jury trial some time before the June 15, 1982 trial date for determining damages. Having received this notice he traveled from Massachusetts to Virginia. He went to the courthouse in Charlottesville, Virginia and checked the court's records. Having determined the status of the case, he did nothing. He simply returned to Massachusetts choosing to avoid, if at all possible, any jurisdiction of the state court.

Having previously initiated litigation in both Federal and State courts in Charlottesville, Petitioner, now on the basis of informal legal advice, chose not to contact the state court in anyway until April of 1984.

At that time, almost two years after the jury's verdict assessing damages, the Petitioner filed Motions to Set Aside the Default Judgment. Even now he has yet to pursue his legal remedies under those Motions in state court. Virginia Rule 3:17 clearly gives the state court discretion over Default Judgments, yet this Petitioner, although he had ample time to do so, did not see fit to seek the protection of the state court. Clearly, petitioner's purported civil rights litigation is an afterthought concocted to overturn Default Judgments properly and constitutionally obtained against this Petitioner.

CONCLUSION

No writ should issue in this case. The matter presented by this Petitioner is already decided by existing law contrary to his position. Furthermore, the case as presented in the Petition has no precedential value and adds nothing to interpreting the Due Process and Equal Protection Clauses of the Constitution in the applicability of 42 U.S.C. § 1983. This Petitioner claims he is an "extraordinary" case but that is belied by the

facts of the case. In fact, he is not extraordinary but rather simply a disgruntled judgment debtor whose efforts to make a test case in the first instance backfired when on countersuit he was properly served under the valid "Long Arm" Statute of the Commonwealth of Virginia.

Respectfully submitted

SHC CORPORATION, et al.

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CERTIFICATE

I hereby certify that three copies of the foregoing RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT was

mailed, postage prepaid, this 18th day of August, 1986, to J. Benjamin Dick, Esquire, Law Offices of J. Benjamin Dick, 421 Park Street, Suite 2, Charlottesville, Virginia 22901.

/s/GREGORY E. LUCYK

242-P561

APPENDIX I

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. SUPERIOR COURT
NO. 82-4860

SHC CORPORATION, d/b/a MOUSETRAP VINTAGE CELLARS Plaintiff	)	DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO BE ANSWERED UNDER OATH BY THE DEFENDANT
vs.	)	
DENIS R. O'BRIEN Defendant	)	

1. State your name and current residence address.

   Denis R. O'Brien, 2 Cutting Street, Winchester, Mass.

2. State all addresses at which you have resided since January 1, 1982, giving the dates of beginning residence and ending residence at each particular address listed.

   184 Farrington St. Wollaston, Mass.: January 1, 1982, to February 28, 1982;
   57 Webster Street, Arlington, Mass.: March 1, 1982, to August 31, 1982;
   2 Cutting Street, Winchester, Mass., September 1, 1982, to present.

3. As to each of the addresses identified in the previous answer, state whether you owned or rented your residence, and if you rented, state the name and address of your landlord and any rental agent involved.

I rented the apartment at each address mentioned above.
184 Farrington St., Wollaston - landlord: Gerrard Raines, 184 Farrington St., Wollaston, MA; 57 Webster St., Arlington., - landlord: Michael Kogan, present address is unknown; 2 Cutting St., Winchester, MA - landlord: Kevin Gurry, 2 Fairview Terrace, Winchester, Mass.

4. As to each of the properties listed in the preceding two answers at which you were renting, state:

a. the name and address of the person or entity to whom you mailed or delivered rental checks;
b. if you paid otherwise than by check, state the method of payment;
c. the name and address of the person or entity to whom payments were made.

a. I paid rent to each of the landlords list in paragraph three above.
b. I paid rent by check.
c. See paragraph a above.

5. Give the names and addresses of all banks in which you have held checking or savings accounts since January 1, 1982.

Defendant refuses to answer interrogatory number five on the grounds that the information sought to be obtained is not relevant to the subject matter involved in the pending action and is not

reasonably calculated to lead to the discovery of admissible evidence.

6. Since January 1, 1982, have you told anyone that you held a residence address other than those listed in answers 2 and 3 above?

No.

7. If so, state the name and address of the person or persons to whom you made such statements, the address you gave them, and the reasons for giving that information to that person or persons at that time.

See answer to paragraph six above.

8. Between February 17, 1982, and March 17, 1982, were you at any time aware that a letter had been sent to you by certified mail from Virginia?

No.

9. If so, state the name of any person who furnished you with this information.

See answer to paragraph eight above.

10. Have you ever spent one or more nights at the property known and numbered 184 Farrington Street, Wollaston, Massachusetts?

Yes. It is impossible to state which specific dates I stayed at that address at that address, but see generally my answer to question 2 above.

11. State the name or names of any other persons residing at or occupying 184 Farrington Street,

Wollaston, Massachusetts, during the period that you stayed there.

Gerrard Raines.

12. State the circumstances of your having stayed at 184 Farrington Street, Wollaston, Massachusetts.

I lived there.

13. Have you told any person that you resided or stayed at 184 Farrington Street, Wollaston, Massachusetts?

Yes.

14. If so, state the name of that person or persons that you told.

It is impossible to recall all persons to whom I gave that address.

15. Have you given 184 Farrington Street, Wollaston, Massachusetts, as your residence or for any purpose?

Yes.

16. Have you used 184 Farrington Street, Wollaston, Massachusetts, as a mailing address?

Yes.

17. If so, give the name and address of the person to whom you gave that address as a mailing address.

It is impossible to recall all the persons to whom I gave that address.

18. Give that approximate date of giving that information, and state the reason and purpose for giving that information.

It is impossible to recall all the persons to whom I gave that address.

19. Give the name and address of your current employer.

Harvard University, Cambridge, Mass.

20. State the nature of your employment currently setting forth the duties and titles that you have.

I am a post doctural fellow. I do teaching and research in the Biology Department.

21. Do you plan, intend, or reasonably anticipate changing your employment or residence within the next six months? If so, state the details of the anticipated change, including your new employer, if known, and the approximate date on which the change will take place.

No.

22. Have you had any roommate, housemate or other persons with whom you have shared a residence since January 1, 1981? If so, identify all such persons, giving the dates during which you shared residences.

Gerrard Raines: January 1, 1982 to February 28, 1982.
Michael Kogan: March 1, 1982 to August 31, 1982.
Jean Kejemy: September 1, 1982, to present.
Kathleen Pearce: September 1, 1982 to present.
Mark Schultz: September 1, 1982 to present.

Signed under the pains and penalties of perjury, this 13th day of October, 1982.

/s/DENIS R. O'BRIEN
Denis R. O'Brien

By his attorney,

/s/BARBARA D. JACKINS
Barbara D. Jackins

Certificate of Service

I hereby certify under the pains and penalties of perjury that I have served a copy of the foregoing Defendant's Answers to Plaintiff's Interrogatories upon the Plaintiff's attorney, Samuel Newman, Newman and Newman, P.C., by forwarding to him a copy of same at 50 Congress St., Boston, MA, 02108, by first class mail, postage pre-paid this 14th day of October, 1982.

/s/BARBARA D. JACKINS
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